

REMARKS/ARGUMENTS

Claims 27-73 are pending. By this Amendment, claims 27, 28, 60, 63 and 67 are amended, and new claims 70-73 are added. Reconsideration in view of the above amendments and the following remarks is respectfully requested.

Applicants acknowledge that claims 28-56 have been withdrawn from consideration by the Examiner. Applicants respectfully request rejoinder of claims 28-56 at least because independent claims 29, 35, 43 and 49 recite that the mask fit test pressure is based on a percentile pressure of a previous ventilatory assistance session. The claims of the parent application (U.S. Application 09/469,954, handled by Examiner Patel, which is now U.S. Patent No. 6,425,395), include a similar analog apparatus version of this feature which was found by Examiner Patel to distinguish over Estes et al. (U.S. Patent No. 5,901,704).

In addition, while independent claim 28 has been restricted since it is directed to an apparatus having an automatic titration mode, Applicants respectfully submit that dependent claim 60 recites that the apparatus is operable in two modes, and new dependent claim 70 specifies one of those modes as being an automatic titration mode. Accordingly, because claim 70 is a linking claim, rejoinder and examination of claim 28 are respectfully requested. In this Amendment, claim 28 is amended in a manner which is similar to the way claim 27 has been amended.

Turning now to the merits of the Office Action, Applicants note that claims 27, 57-62, 64, 66 and 69 were rejected under 35 U.S.C. §102(e) over Estes et al. (U.S. Patent No. 5,901,704). This rejection is respectfully traversed.

Independent claim 27 is directed to a method for determining a mask-fit test pressure to be applied to a wearer's mask by ventilatory assistance apparatus. The mask-fit test pressure is

adaptively dependent on a prior pressure treatment session of the wearer. The mask-fit pressure is substantially similar in magnitude to normal pressures encountered during the prior treatment session.

Estes et al. does not teach or suggest this subject matter. Estes et al. states that the preset leakage test pressure is a relatively high pressure and may, for instance, be the peak pressure output by the apparatus during the previous night or some other desired pressure. See column 30, lines 24-27.

This method for establishing test pressure is similar to that described in the background of the present application. The problem with the method employed by Estes et al. is that the test pressure may not relate to the pressures which are encountered by the patient during a normal treatment session. If the test pressure is significantly different from the pressures encountered during normal use, a good indication of mask fitting under normal conditions will not be obtained. See page 2, lines 13-20 of the present application. Stated differently, the test-fit pressure described in Estes et al. may be too high for one patient, but too low for another, as described in relation to Figure 1 of the present application.

Therefore, Applicants respectfully submit that Estes et al. does not teach that the mask-fit pressure is substantially similar in magnitude to normal pressures encountered during the prior treatment session, as recited in claim 27.

Withdrawn independent claim 28 also includes this subject matter, and is similarly not taught or suggested by Estes et al. Dependent claims 57-62, 64, 66 and 69 are patentable by virtue of their dependence on claim 27, and for the further features they recite.

Reconsideration and withdrawal of the rejection are respectfully requested.

Claims 59 and 65 were rejected under 35 U.S.C. §103(a) over Estes et al. This rejection is respectfully traversed since claims 59 and 65 are patentable by virtue of their dependency on claim 27, in addition to the further features they recite.

New dependent claims 70-73 are presented for the Examiner's consideration and define features which are also not taught or suggested by Estes et al.

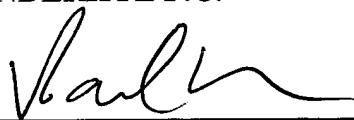
Applicants appreciate the indication that claims 63, 67 and 68 are indicated to be allowable if placed into independent form. By this Amendment, claims 63 and 67 are placed into independent form including the subject matter of claim 27 (prior to the present amendment) and claim 61. However, in view of the above amendments and remarks, Applicants respectfully submit that all the claims are patentable and that the entire application is in condition for allowance.

Should the Examiner believe that anything further is desirable to place the application in better condition for allowance, she is invited to contact the undersigned at the telephone number listed below.

Respectfully submitted,

NIXON & VANDERHYE P.C.

By: _____



Paul T. Bowen
Reg. No. 38,009

PTB:jck
1100 North Glebe Road, 8th Floor
Arlington, VA 22201-4714
Telephone: (703) 816-4000
Facsimile: (703) 816-4100